

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-903

December 30, 1999

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Rates of Sidney
Telephone Company Pursuant to
35-A M.R.S.A. § 7101-B

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve a Stipulation which resolves all of the issues in the above-captioned matter. The Stipulation provides that on May 30, 2001, Sidney Telephone Company (Sidney) will lower its intrastate access rates to the 1999 NECA tariff rates and that neither the Commission nor Sidney will initiate a general rate proceeding until March 1, 2002, absent specific extenuating circumstances.

II. BACKGROUND

On May 27, 1997, the Maine Legislature enacted 35-A M.R.S.A. § 7101-B, which required the Commission to establish intrastate access rates for local exchange carriers based on their interstate access rates as established by the Federal Communications Commission (FCC) by May 30, 1999, and every two years thereafter. On December 19, 1997, we adopted Section 8(J) of Chapter 280 of our Rules, which required Sidney (and all other independent telephone companies (ITCs)) to reduce its intrastate access rates by 40% of the difference between its existing rates and the level of the interstate access rates by May 30, 1998. On May 27, 1998, we approved Sidney's initial rate reduction.

After these initial rate reductions were filed, the Commission Staff and the Telephone Association of Maine (TAM) began informal discussions to attempt to resolve issues regarding the access rate reductions planned for May 30, 1999. On November 24, 1998, we opened formal investigations into the rates of each ITC, including Sidney. The Office of the Public Advocate (OPA), Bell Atlantic and TAM subsequently petitioned to intervene in this case and all three petitions were granted.

On January 28, 1999, we issued our Interim Order in this case as well as all of the other ITC investigations. The Interim Order required Sidney to reduce its rates to the NECA Pool Disbursement levels by May 30, 1999. It also stated that it was our goal to reduce access rates to NECA Tariff levels by May 31, 2001.

On January 12, 1999, the Staff conducted a Technical Conference in this case. On March 10, 1999, Sidney filed a letter with the Commission stating that no change in access rates was necessary for Sidney's rates to be in accord with Section 8(J) of

Chapter 280 as of May 30, 1999. In response to a Staff request, Sidney filed backup data to support Sidney's proposed filing on May 4, 1999. On May 30, 1999, we allowed Sidney's revised Access Rate Tariff to go into effect.

On May 4, 1999, Sidney provided the Staff and the Public Advocate with an analysis of the impact of access rate reductions. On May 6, 1999, Sidney met with the Staff and the Public Advocate to discuss the information regarding the access rate reductions and to discuss the elements of a plan for transitioning to access rates closer to the NECA Tariff level by May 2001. Conference calls were held on May 18, June 23, and August 5, 1999, and another meeting was held on November 2, 1999. These discussions produced the resolution contained in the Stipulation.

On December 2, 1999, Sidney Telephone Company filed the attached Stipulation. On December 3, 1999, and December 16, 1999, respectively, TAM and Bell Atlantic filed letters stating that while they were not signing the Stipulation, they did not object to it. On December 17, 1999, the OPA filed a letter saying that he joined in the Stipulation.

III. DECISION

A. Standard

In reviewing a stipulation submitted by the parties to a proceeding, we must consider:

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. whether the process that led to the stipulation was fair to all parties; and
3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. Id.

B. Discussion

First, we find that the fact that the OPA signed the Stipulation and that Bell Atlantic and TAM did not object to it provides sufficient evidence that there is no appearance or reality of disenfranchisement. The OPA represents the using and

consuming public before the Commission and thus, by signing the Stipulation, indicates the OPA's belief that the Stipulation benefits ratepayers. Bell Atlantic will likely be the biggest payer of Sidney's access rates and thus, by not objecting to the Stipulation, indicates that the Stipulation adequately addresses its, as well as other access payers', concerns.

Second, we find, based upon our knowledge of our staff's participation in the process that led to the stipulation, that it was fair to all parties. All meetings were noticed to all parties and all parties were given an opportunity to meaningfully participate in the discussions that led to the Stipulation. We find this process inherently fair.

Third, we find that the stipulated result is reasonable and complies with the legislative mandate found in 35-A M.R.S.A. § 7101-B. The most pertinent provisions of the Stipulation are as follows:

Access Rate Reduction. On May 30, 2001, Sidney will reduce its intrastate access rates to the NECA Tariff No. 5 interstate switched access rates effective for the Sidney on August 1, 1999. The new rates will stay in effect until at least May 30, 2003.

Rate Case Moratorium. Until March 1, 2002, neither Sidney nor the Commission will initiate a rate proceeding.

Exceptions to Rate Case Moratorium. The Rate Case Moratorium may be terminated or modified if Sidney is required to reduce its intrastate access rates to a level 10% below the agreed upon levels because of an order, statute, or rule or if certain exogenous events result in a net 10% or more increase or decrease in the costs, revenues, or net operating income of Sidney.

Notice of Initiation of Rate Proceeding. If either the Commission or Sidney believes that the rate case moratorium should be terminated, it must give notice of its intention to file a rate case and allow an opportunity to object to the notice.

Information on Separations Changes. If the FCC issues an order which "freezes", changes the separations factors or categories, or declares internet or other ESP minutes of use to be jurisdictionally interstate in nature, then, within 60 days of the issuance of the order, Sidney will provide the Commission and the Public Advocate with an earnings analysis using the most recently available test year, which reflects the effects of the FCC's order.

We find that, taken together, these provisions are reasonable, meet section 7101-B's legislative mandates, and promote the public interest by protecting

ratepayers from a rate increase related to the access rate reductions until well after the NECA 5 rates are put in place. Given the dynamic nature of the telecommunications industry and anticipated changes in separations, it is possible that by the time Sidney's rate case moratorium ends that no rate increase may be needed due to the effects of the access rate reductions.

Section 3(e) of the Stipulation provides procedures to be followed in the event of the initiation of a rate proceeding by either Sidney or the Commission. The procedures require notification of the intention to file a rate case and provide twenty-one days for objections to that notice. Because the time for objecting is different from other objection periods allowed by Commission rules, we will require Sidney, as well as ourselves, to clearly state the response period required by the Stipulation in the notification filing.

Accordingly, we order:

1. That the Stipulation attached as Attachment A and filed on December 2, 1999, is approved as modified above;
2. That Sidney file compliance tariffs by February 1, 2001.

Dated at Augusta, Maine, this 30th day of December, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.